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REMARKS

The Office Action dated June 14, 2006 has been received and its contents carefully noted. By the above actions, claims 1-4 and 6-24 are pending in the application. In order to better define that which Applicants regard as the invention, claims 1, 13, 16, and 23 have been amended, and claim 5 has been cancelled. No new matter has been added. Support for the amendments are provided in the original claims, Figures 1-9, and related text of the specification.

In view of these actions and the following remarks, reconsideration of this application is now requested.

Rejection under 35 U.S.C. § 102

Claims 1-3, 8, 9, 13-18, 23, and 24 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 6,238,354 to Alvarez. The Applicants respectfully traverse this rejection, because Alvarez fails to recite each and every element recited by the present claims. In particular, independent claim 1 has been amended to recite "a piercing element with a temperature sensor." Independent claim 13 has been amended to recite "inserting a temperature sensor into the food." Independent claim 16 has been amended to recite "means for inserting the means for sensing into the food." Independent claim 23 has been amended to recite "a piercing element with a temperature sensor." As the present specification explains, "[w]hen the temperature sensor 306 is inserted into a selected food item, the temperature sensor 306 detects the temperature." (See present specification as filed, page 9, lines 3-5, emphasis added.) Furthermore, with reference to FIGS. 3 and 4, the present specification explains "[t]he temperature sensor 306 is integrated within a piercing element 310," and "[t]he piercing element 310 is designed for insertion into food. . . ." (See present specification as filed, page 6, lines 7-8.) Similarly, FIG. 8 illustrates the temperature sensor 806 integrated within a piercing element 810, which is designed for insertion into food. (See present specification as filed, page 13, lines 21-22.)

Alvarez, however, fails to disclose a piercing element or insertion of a sensor into food as recited by independent claims 1, 13, 16, and 23. The Examiner even concedes that "Alvarez does not specifically recite the temperature sensor is a

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piercing element.” (See Office Action, page 5, lines 6-7.) Alvarez “is directed to a monitoring assembly designed to continuously monitor the body temperature of a patient, such as a small child, particularly, but not exclusively, while the patient is undergoing bed rest or is sleeping. . . .” (See Alvarez, column 2, lines 35-39, emphasis added.) Because Alvarez relates specifically to the medical monitoring of a human being’s body temperature, the reference fails to disclose, or even suggest, an element that pierces, or is inserted into, food to monitor its temperature. As Alvarez explains:

The first sensor structure 30 is preferably mounted on or connected to the housing 12, such as by the strap 14, and is secured by applicable means in the position shown [FIG. 1], so that the first sensor structure is disposed in operative engagement, such as by direct physical contact, with an exterior skin portion of a patient’s body.

(See Alvarez, column 5, lines 21-26, emphasis added.) Moreover, Alvarez also explains:

[A] mounting or attachment structure . . . , which may include a clip, adhesive patch, or an elongated strap 14 is dimensioned and configured to be removably attached to a patient, such as about a wrist, arm or other portions of the body. The illustrated strap 14 embodiment includes a connector comprising first and second removably attachable, connector components 16 and 18 which are preferably, but not necessarily, in the form of a hook and loop type fastener. Naturally, other type of connector components may be utilized such as a buckle, snap type connectors, tie, draw string, adhesive, etc.

(See Alvarez, column 4, lines 41-51.) Thus, the structures taught by Alvarez for mounting or attaching the sensor to the body are all intended to position the sensor on the exterior surface of the body, and there is absolutely no suggestion that the sensor is coupled to any type of device which is inserted into the body.

Therefore, because Alvarez fails to disclose a piercing element or insertion of a sensor into food, it fails to disclose each and every element recited in independent claims 1, 13, 16, and 23. Accordingly, withdrawal of the rejection of claims 1, 13, 16, and 23 is in order, and is respectfully requested.

Applicants also respectfully submit that dependent claims 2-3, 8, 9, 14-15, 17-18, and 24 are likewise allowable since they depend on what is now allowable base claims 1, 13, 16, and 23, respectively.

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Rejection under 35 U.S.C. § 103

Claims 4-7, 12, 19, and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,238,354 to Alvarez in view of U.S. Pat. No. 6,591,739 to Norcross. Applicants respectfully traverse this rejection, because the Examiner has failed to identify any teachings in the references that suggest that the medical device of Alvarez should be combined with the features disclosed by Norcross, which relate to a food utensil. In this regard, Applicants respectfully contend that the Examiner has failed to establish a *prima facie* case of obviousness.

Norcross is directed to a utensil "which sense[s] the temperature of food" and does not relate at all to Alvarez, which is "is directed to a monitoring assembly designed to continuously monitor the body temperature of a patient." (See Norcross, column 5, line 36, and Alvarez, column 2, lines 35-37.) Nowhere does Alvarez even suggest using a patient monitor to measure the interior temperature of food.

Furthermore, as discussed previously, the structures taught by Alvarez for mounting or attaching the sensor to the body are all intended to position the sensor on the exterior surface of the body, and there is absolutely no suggestion that the sensor is coupled to any type of device which is inserted into the body. As such, Alvarez teaches away from inserting a sensor to monitor interior temperature. Norcross, however, is directed to a food utensil that pierces food to detect its interior temperature. As Norcross explains:

[E]ach of the modular heads includes a piercing member having a temperature sensing device for insertion into food for sensing the temperature at an internal location thereof. For instance, one tine of the fork head includes a thermocouple to measure the internal temperature of food being cooked.

(See Norcross, column 3, lines 29-34, emphasis added.)

Because Alvarez measures exterior temperature of a human body and Norcross measures interior temperature of cooked food, there would be no motivation to combine the references as suggested by the Office Action. Therefore, this rejection is believed to be improper, and withdrawal of this rejection is in order and is respectfully requested.

Additionally, in view of the amendments to base claims 1 and 16, Applicants respectfully submit that this rejection is rendered moot and that dependent claims 4,

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6-7, 12, 19, and 20 are allowable at least for the reason of their dependency on allowable base claims 1 and 16. Thus, withdrawal of this rejection is in order and is respectfully requested.

Claims 10, 11, 21, and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,238,354 to Alvarez. In view of the amendments to base claims 1 and 16, Applicants respectfully submit that this rejection is rendered moot and that dependent claims 10, 11, 21, and 22 are allowable at least for the reason of their dependency on allowable base claims 1 and 16. Thus, withdrawal of this rejection is in order and is respectfully requested.

Therefore, the present application is now believed to be in condition for allowance. However, should the Examiner find some issue to remain unresolved, or should any new issues arise, which could be eliminated through discussions with Applicants' representative, then the Examiner is invited to contact the undersigned by telephone in order that further prosecution of this application can thereby be expedited.

Respectfully submitted,



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